



**NextWave Broadband Inc.**

**75 Holly Hill Lane, Suite 200, Greenwich, CT 06830**

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February 7, 2006

***Via Electronic Filing***

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Ex Parte Notice**  
***Amendment of Parts 1,21,73, 74 and 101 of the Commission's Rules to Facilitate the***  
***Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced***  
***Services in the 2150-2162 and 2500-2690 MHz Bands, CC Docket No. 03-66***

Dear Ms. Dortch:

NextWave Broadband Inc. ("NextWave") submits this brief ex parte presentation to express its views on certain important matters in the BRS Order<sup>1</sup> that are under reconsideration in the above-referenced proceeding.

In recent months, NextWave has actively sought the acquisition and lease of spectrum in the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS"). As a new entrant with high hopes of utilizing EBS and BRS spectrum to deliver advanced wireless broadband services to the market, NextWave has a keen interest in the outcome of the ongoing rulemaking. The executive leadership of NextWave has extensive experience in operating wireless networks and developing wireless broadband, multimedia and end-to-end network solutions for the wireless industry. NextWave has the technical and financial resources to quickly deploy next-generation wireless broadband networks, and views BRS and EBS spectrum as key enablers for such activities.

To this end, NextWave urges the Commission, in its final adoption of the new BRS and EBS rules, to bear in mind three of its key public policy objectives in the rulemaking: (1) promotion of the economic viability of services in the band by ensuring that the spectrum is as fungible, tradable and marketable as possible; (2) facilitation of the speed of transition and deployment in the band; and (3) encouragement of increased competition in wireless broadband through the creation of new opportunities for new entrants.

Consistent with the foregoing guiding principles, NextWave expresses its specific views on certain matters that are presently under reconsideration:

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<sup>1</sup> *Amendment of Parts 1,21,73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, FCC Rcd 14165 (2004) ("BRS Order").

- ***The Commission Should Not Set Term Limits For EBS Leases.***

In view of the Commission's goal of promoting the economic viability of EBS and BRS spectrum by ensuring that it is as fungible, tradable and marketable as possible, the Commission should not create a market barrier to the lease of EBS spectrum by imposing any lease term limits (i.e., 15-year term limits). There is fundamentally no rational justification for imposing a 15-year lease term limit (or any other equally arbitrary number) on EBS leases while most other wireless spectrum can be freely and flexibly leased under the FCC's secondary markets rules and policies. EBS licensees are best situated to determine how to utilize their spectrum resources to further their educational missions and to determine the consideration they require to meet their goals. Only individual EBS licensees, not the Commission and not industry, should make the determination of the lease terms that will satisfy their objectives. EBS leasing activities should be governed solely by the FCC's secondary markets rules and policies.

- ***The Commission Should Not Increase The Minimum Educational Use Reservation for EBS Spectrum.***

Like limiting EBS leases to 15-year terms, raising the minimum educational reservation requirement for EBS spectrum from five percent to twenty-five percent would be contrary to the Commission's goal of promoting the viability, fungibility and marketability of the EBS spectrum. Again, other wireless spectrum that is available for secondary markets leasing is not burdened with this reservation of spectrum. Increasing the minimum educational use requirement can only harm EBS licensees by eliminating potential suitors for leases and reducing potential revenues to EBS licensees that might otherwise be used to further their educational missions.

- ***Spectrum Transitions Should Be Effectuated on a BTA Basis.***

In order to facilitate the speed of transition and deployment in the band, NextWave urges the Commission to effect transitions on a Basic Trading Area ("BTA") basis and not on a Major Economic Area ("MEA") basis, as originally adopted. As the WCA and others have explained, the historical development of existing BRS licenses, and the practical difficulties of financing and coordinating transitions on an MEA scale, strongly suggest that transitioning on a BTA basis would be more manageable and feasible, and more likely to result in speedy transitions and deployments in the band.

- ***The Commission Should Stand Firm on the January 10, 2008, Deadline For Filing Initiation Plans.***

To create new spectrum opportunities for new entrants and to facilitate the speed of transition and deployment in the band, NextWave supports the January 10, 2008, 3-year filing deadline for Initiation Plans as adopted by the Commission in the *BRS Order*. While NextWave appreciates that key transition-related issues have been subject to modification through the reconsideration process, the industry should nonetheless have close to two years to perfect and file Initiation Plans and begin the process of transitioning the spectrum. Licensees who are unable to develop Initiation Plans in this time period should return their licenses to the Commission for auction to new entrants, like NextWave, who will put the spectrum to its best and highest use.

- ***A Transition Proponent Should Be Reimbursed Immediately After the Transition Is Complete.***

To encourage new entrants to expeditiously transition BRS and EBS spectrum, the Commission should require reimbursement of transition-related expenses to proponents almost immediately after the transition is complete (i.e., within 30 days of invoice after post-transition notifications are filed). NextWave disagrees with the notion that commercial operators benefiting from transitions should only be obligated to reimburse proponents when commercial operations commence. The Commission's reimbursement requirements should be fiscally and economically rational – not charitable. Proponents should be encouraged to transition spectrum, not discouraged by the potential for carrying, indefinitely, the transition costs of other commercial operators.

In closing, NextWave applauds the Commission's efforts to overhaul the band plan and service rules for BRS and EBS spectrum and hopes that such efforts will revitalize this very valuable spectrum that has lain fallow for far too long. NextWave also applauds the ongoing efforts of the industry, including Sprint/Nextel, Clearwire Corporation, BellSouth, the Catholic Television Network, the National ITFS Association and the Wireless Communications Association International, Inc., whose leadership in this rulemaking should hasten use and development of this spectrum for advanced wireless broadband services.

Pursuant to Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed with the office of the Secretary. Please contact the undersigned if there are any questions or comments associated with this notice.

Respectfully submitted,

/s/

George Alex, Chief Financial Officer  
NextWave Broadband Inc.